

1 CHARLES D. JENKINS (SBN 114897)
2 CHARLES E. PERKINS (SBN 163422)
3 DAN D. KIM (SBN 212577)
4 JENKINS, GOODMAN & NEUMAN
5 417 Montgomery Street, 10th Floor
6 San Francisco, California 94104
7 Telephone: 415/705-0400
8 Facsimile: 415/705-0411

6 DAVID L. HARTSELL - Appearing *Pro Hac Vice*
ROSS & HARDIES
7 150 N. Michigan Avenue
Chicago, IL 60601
8 Telephone: 312/558-1000
Facsimile: 312/750-8600

Attorneys for Defendants

14 ELENA DEL CAMPO, on behalf of
herself and all others similarly situated,

Case No. C01-21151 JW

15 Plaintiff,
16 vs

**DEFENDANTS' ANSWER TO
COMPLAINT**

17 GEORGE KENNEDY, AMERICAN
18 CORRECTIVE COUNSELING
19 SERVICES, INC., DON R.
MEALING, BRUCE D. RAYE,
LYNN R. HANSEY a/k/a R. D.
DAVIS and DOES 1 through 20.

JURY TRIAL DEMANDED

Defendants.

22 Defendants AMERICAN CORRECTIVE COUNSELING SERVICES, INC., DON
23 R. MEALING, and LYNN R. HANSEY a/k/a/ R.D. DAVIS hereby answer the complaint
24 of ELENA DEL CAMPO as follows¹:

¹ By order of the Court dated May 8, 2002, Plaintiff's First and Second Claims For Relief have been dismissed. Although the Santa Clara County District Attorney, George Kennedy, was named as a Defendant in this action, only the dismissed claims were alleged against said Defendant. Thus, there are no surviving claims that name George

1 1. Defendants admit that plaintiff purports to bring this action for alleged
 2 violations of the Civil Rights Act, 42 U.S.C. §1983, the Fair Debt Collection Practices Act,
 3 15 U.S.C. §1692, et seq., and the California Unfair Business Practices Act, Business and
 4 Professions Code §17200, but deny that they have violated any of said statutes or that the
 5 plaintiff has stated a claim thereunder. Defendants further admit that the California Penal
 6 Code authorizes a “bad check diversion program” and that ACCS has contracted with
 7 various district attorneys throughout California to assist in the operation of such programs;
 8 but deny that in doing so ACCS or the district attorneys have imposed any unlawful
 9 charges, violated constitutional due process guarantees or violated any federal or state
 10 statutes. Defendants deny the remaining allegations contained in paragraph 1 and,
 11 specifically, deny that this case can properly be maintained as a class action.

12 2. Defendants deny that they, or any one of them, are “debt collectors” within
 13 the meaning of the FDCPA and, therefore, deny that subject matter jurisdiction exists in
 14 this case under either 28 U.S.C. §1331 or 15 U.S.C. §1692k(d) or, even if it did, that the
 15 Court should exercise supplemental jurisdiction pursuant to 28 U.S.C. §1337 over
 16 plaintiff’s state law claim.

17 3. Defendants are without sufficient knowledge or information to form a belief
 18 as to the truth of the allegations contained in paragraph 3, and on that basis deny each and
 19 every allegation contained therein.

20 4. Defendants admit the allegations contained in paragraph 4 and, further, state
 21 that all claims against George Kennedy and his office have been dismissed.

22 5. Defendants admit that ACCS is a corporation, with its principal place of
 23 business in California at the stated address. Defendants deny that ACCS is in the business
 24 of “collecting dishonored checks” or that it operates under color of state law which is a
 25 legal conclusion and further, deny the remaining allegations, if any, contained in paragraph

26 Kennedy as a Defendant and his offices are thus no longer party to this action.

1 5.

2 6. Defendants admit that Don Mealing is the President of ACCS, but deny the
3 remaining allegations of paragraph 6 including, that Mr. Mealing has operated under color
4 of state law, which is a legal conclusion.

5 7. Defendants deny the allegations contained in paragraph 7 including, that Mr.
6 Raye has operated under color of state law, which is a legal conclusion. Defendants
7 affirmatively state that Bruce D. Raye is employed by the Santa Clara District Attorneys
8 Office.

9 8. Defendants admit that Lynn R. Hasney is employed by ACCS as executive
10 vice president of operations, but deny the remaining allegations contained in paragraph 8
11 including, that Ms. Hasney has operated under color of state law, which is a legal
12 conclusion.

13 9. Defendants are without sufficient knowledge or information to form a belief
14 as to the truth of the allegations contained in paragraph 9 and thus deny each and every
15 allegation contained therein.

16 10. Defendants deny the allegations contained in paragraph 10.

17 11. Defendants deny the allegations contained in paragraph 11.

18 12. Defendants admit that ACCS offers to assist district attorneys in developing
19 bad check misdemeanor diversion programs. Defendants further admit that Exhibit 1 to
20 the complaint is a partial printout of informational materials that appear or appeared on
21 ACCS' website. Defendants deny the remaining allegations contained in paragraph 12.

22 13. Defendants admit that ACCS has contracted with district attorneys in the
23 Counties of Santa Clara, Los Angeles, Monterey, Merced, Orange, Riverside, San
24 Bernadino, San Diego, San Joaquin and Stanislaus to assist in the operation of bad check
25 misdemeanor diversion programs. Defendants deny the remaining allegations contained in
26 paragraph 13.

1 14. Defendants admit that Mealing participated in the general design and
 2 development of ACCS' bad check misdemeanor diversion program, but deny that Mealing
 3 is involved in implementing any program on a day-to-day basis.

4 15. Defendants admit the allegations contained in paragraph 15 of the complaint.

5 16. Defendants admit the allegations contained in paragraph 16 of the complaint.

6 17. Defendants admit that on or about June 11, 2001 plaintiff wrote a bad check
 7 in the amount of \$95.02 to Fry's Electronics Store in Palo Alto, California, but are without
 8 sufficient knowledge or information to form a belief as to the remaining allegations
 9 contained in paragraph 17, and on that basis deny those allegations.

10 18. Defendants are without sufficient knowledge or information to form a belief
 11 as to the truth of the allegations contained in paragraph 18, and on that basis deny each
 12 and every allegation contained therein.

13 19. Defendants admit that an "Official Notice" dated October 3, 2001 was sent
 14 to plaintiff from the Santa Clara County District Attorney Bad Check Restitution Program,
 15 that a copy of said notice is attached as Exhibit 2 to the complaint, and that said notice
 16 speaks for itself. Defendants deny the remaining allegations contained in paragraph 19.

17 20. Defendants admit that the Santa Clara County District Attorney is aware of
 18 the notices and forms used in its Bad Check Restitution Program. Defendants deny the
 19 remaining allegations contained in Paragraph 20.

20 21. Defendants deny the allegations contained in paragraph 21, including the
 21 allegations contained in sub-paragraphs (a)-(f) that they have made or that Exhibit 2
 22 contains any false representations.

23 22. Defendants deny the allegations contained in paragraph 22, including sub-
 24 paragraphs (a)-(g).

25 23. Defendants admit that plaintiff made a partial payment of \$95.02 to the Santa
 26 Clara County District Attorney Bad Check Restitution Program, but are without sufficient

1 information or knowledge to form a belief as to the remaining allegations contained in
2 paragraph 23.

3 24. Defendants admit that a "Notice of Failure to Comply" dated November 7,
4 2001 was sent to plaintiff from the Santa Clara County District Attorney Bad Check
5 Restitution Program, that a copy of said notice is attached as Exhibit 3 to the complaint,
6 and that said notice speaks for itself. Defendants deny the remaining allegations contained
7 in paragraph 24.

8 25. Defendants admit that the Santa Clara County District Attorney is aware of
9 the notices and forms used in its Bad Check Restitution Program. Defendants deny the
10 remaining allegations contained in paragraph 25.

11 26. Defendants deny the allegations contained in paragraph 26, including the
12 allegations contained in sub-paragraphs (a)-(d) that they have made or that Exhibit 3
13 contains any false representations.

14 27. Defendants deny the allegations contained in paragraph 27, including sub-
15 paragraphs (a)-(e).

16 28. Defendants admit that an "Official Notice" dated December 5, 2001 was sent
17 to plaintiff from the Santa Clara County District Attorney Bad Check Restitution Program,
18 that a copy of said notice is attached as Exhibit 4 to the complaint, and that said notice
19 speaks for itself. Defendants deny the remaining allegations contained in paragraph 28.

20 29. Defendants admit that the Santa Clara County District Attorney is aware of
21 the notices and forms used in its Bad Check Restitution Program. Defendants deny the
22 remaining allegations contained in paragraph 29.

23 30. Defendants deny the allegations contained in paragraph 30, including the
24 allegations contained in sub-paragraphs (a)-(d) that they have made or that Exhibit 4
25 contains any false representations.

26 31. Defendants deny the allegations contained in paragraph 31, including sub-

1 paragraphs (a)-(d).

2 32. Defendants admit that all of the bad check misdemeanor diversion programs
 3 with which ACCS is affiliated in California operate under the same laws governing those
 4 programs, but that there can be differences in each program as determined by the particular
 5 district attorney. Defendants deny the remaining allegations contained in paragraph 32.

6 33. Defendants admit that ACCS maintains certain information on each
 7 suspect's case until such time, if ever, that the case is submitted for prosecution.
 8 Defendants deny the remaining allegations contained in paragraph 33.

9 34. Defendants admit that ACCS is compensated by the Santa Clara County
 10 District Attorney through the program fee and a portion of the administrative fee, but deny
 11 that ACCS receives any part of the returned item fee. Defendants deny the remaining
 12 allegations contained in paragraph 34.

13 35. Defendants admit that the Santa Clara District Attorney retains a portion of
 14 the administrative fee it collects through its Bad Check Restitution Program. Defendants
 15 deny the remaining allegations contained in paragraph 35.

16 36. Defendants admit that ACCS currently is under contract with several
 17 California district attorneys to assist in the operation of bad check misdemeanor diversion
 18 programs as provided for by California law. Defendants deny the remaining allegations
 19 contained in paragraph 36.

20 37. Defendants deny the allegations contained in paragraph 37.

21 38. Defendants deny a validation notice as set forth in 15 U.S.C. § 1692g(a) was
 22 required to accompany the letters which were admittedly sent without such notice.

23 39. Defendants deny a warning as set forth in 15 U.S.C. § 1692e(11) was
 24 required to accompany the letters which were admittedly sent without such notice.

25 40. Defendants deny the allegations contained in paragraph 40.

26 41. Defendants deny the allegations contained in paragraph 41.

1 42. Defendants deny the allegations contained in paragraph 42.

2 43. Defendants deny the allegations contained in paragraph 43.

3 44. Defendants deny the allegations contained in paragraph 44.

4 45. Defendants deny the allegations contained in paragraph 45.

5 46. Defendants deny the allegations contained in paragraph 46.

6 47. Defendants deny the allegations contained in paragraph 47.

7 48. Defendants deny the allegations contained in paragraph 48.

8 49. Defendants admit that this case purports to be brought as a class action, but
9 deny that the case is appropriate for class certification and deny the remaining allegations
10 contained in paragraph 49.

11 50. Defendants deny the allegations contained in paragraph 50.

12 51. Defendants deny the allegations contained in paragraph 51, including the
13 allegations contained in sub-paragraphs (a)-(n).

14 52. Defendants deny the allegations contained in paragraph 52.

15 53. Defendants deny the allegations contained in paragraph 53.

16 54. Defendants deny the allegations contained in paragraph 54.

17 55. Defendants deny the allegations contained in paragraph 55.

18 56. Defendants deny the allegations contained in paragraph 56.

19 57-62. The causes of action asserted in paragraphs 57-62 have been dismissed with
20 prejudice, thus rendering said allegations irrelevant.

21 63. Defendants incorporate their responses previously asserted to paragraphs 1-
22 62 above as though fully set forth herein.

23 64. Defendants deny that they are “debt collectors” within the meaning of the
24 FDCPA and deny all of the allegations contained in paragraph 64, including sub-
25 paragraphs (a)-(j), with the following exceptions:

26 64(a). Defendants admit that Exhibit 2 does not contain a validation notice

1 as set forth in 15 U.S.C. § 1692g(a), but deny said notice was required.

2 64(b). Defendants admit Exhibit 2 does not contain a warning as set forth
3 in 15 U.S.C. § 1692e(11), but deny said notice was required.

4 65. Defendants incorporate their responses previously asserted to paragraphs 1-
5 64 above as though fully set forth herein.

6 66. Defendants admit the allegations contained in paragraph 66, but denies that
7 plaintiffs have stated a claim or are entitled to any relief under CUBPA.

8 67. Defendants deny the allegations contained in paragraph 67.

9 68. Defendants deny the allegations contained in paragraph 68.

10 69. Defendants deny the allegations contained in paragraph 69.

11 70. Defendants deny the allegations contained in paragraph 70.

12 71. Defendants deny the allegations contained in paragraph 71.

13 72. Defendants deny the allegations contained in paragraph 72.

14 **DEMAND FOR JURY TRIAL**

15 Defendants demand trial by jury.

16 DATED: June 24, 2002

JENKINS, GOODMAN & NEUMAN

17

18

By:/s/

19 CHARLES D. JENKINS
Attorneys for Defendants

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23

24

Jenkins, Goodman
& Neuman
417 Montgomery St.
10th Floor
San Francisco, CA
94104
(415) 705-0400

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PROOF OF SERVICE

CASE NAME: *Del Campo v. George Kennedy, et al.*

CASE NUMBER: C01-21151 JW

DATE OF SERVICE: June 24, 2002

DESCRIPTION OF DOCUMENTS SERVED:

DEFENDANTS' ANSWER TO COMPLAINT

SERVED ON THE FOLLOWING:

Counsel for Plaintiff

Paul Arons
Law Offices of Paul Arons
1616 West Street
Redding, California 96001
Tel: (530) 244-5870
Fax: (530) 244-5874

O. Randolph Bragg, III
Horowitz, Horowitz & Assoc.
25 East Washington, Suite 900
Chicago, Illinois 60602
Tel: (312) 372-8822

David L. Hartsell
Ross & Hardies
150 N. Michigan Avenue
Chicago, IL 60601

I am over the age of 18 years and not a party to or interested in the above-named case. I am an employee of Jenkins, Goodman & Neuman, and my business address is 417 Montgomery Street, 10th Floor, San Francisco, CA 94104. On the date stated above, I served a true copy of the document(s) described above, by mail, by placing said document(s) in an envelope, addressed as shown above for collection and mailing on the date shown above following the ordinary business practices of Jenkins, Goodman & Neuman. I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, said document(s) would be deposited with the United States Postal Service at a post box in San Francisco, California on the same day (at approximately 5:00 P.M.) with postage thereon fully prepaid for first class mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date stated above.

/s/

CHERYL WALKER

Jenkins, Goodman
& Neuman
417 Montgomery St.
10th Floor
San Francisco, CA
94104
(415) 705-0400